

Message Text

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C O N F I D E N T I A L SECTION 01 OF 03 MOSCOW 17519

E.O. 11652: GDS
TAGS: PINT, SHUM, UR
SUBJECT: THE HELSINKI MONITORING GROUP TRIALS: FORM
AND SUBSTANCE
REF: MOSCOW 17055

SUMMARY: SOVIET AUTHORITIES TOOK A VARIETY OF STEPS
TO IMPROVE PUBLIC IMAGE CREATED BY GINZBURG AND
SHCHARANSKIY TRIALS, IN CONTRAST TO THE PUBLIC IMAGE
OF THE ORLOV TRIAL. CONCESSIONS OF FORM DID NOT
CARRY OVER INTO SUBSTANCE, HOWEVER, AND EVEN ON
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MATTERS OF FORM GLARING ANOMALIES EXISTED, SUCH AS
REFUSAL TO PERMIT SHCHARANSKIY'S MOTHER TO ATTEND
TRIALS. "AVERAGE" SOVIETS' INTERPRETATIONS OF
TRIALS SEEM TO HAVE VARIED WIDELY. TRIALS AGAIN
DEMONSTRATE THAT IN EXCEPTIONAL CASES IN WHICH
REGIME BELIEVES IT MUST DEFEND ITS INTERESTS, THOSE
INTERESTS TAKE PRECEDENCE OVER LEGAL NORMS, ALTHOUGH

WESTERN INTEREST MAY CAUSE EFFORTS TO MAINTAIN LEGAL FORMALITIES. END SUMMARY.

1. RECOGNIZING THE INTENSE WESTERN INTEREST IN THE TRIALS OF HELSINKI MONITORING GROUP MEMBERS SHCHARANSKIY AND GINZBURG, THE SOVIET AUTHORITIES MADE SEVERAL CHANGES IN THE MODALITIES OF HOW THEY HANDLED THOSE TRIALS (IN COMPARISON TO ORLOV'S TRIAL IN MAY). THESE CHANGES SEEM TO HAVE BEEN DESIGNED TO GIVE THE SOVIET PROPAGANDA APPARATUS AMMUNITION WITH WHICH TO DEFEND THE "FAIRNESS" OF THE CONDUCT OF THE TRIALS. PARTICULARLY NOTEWORTHY IN THIS CONTEXT, WE THOUGHT, WERE THE FOLLOWING:

-- IN KALUGA, A FOREIGN MINISTRY PRESS REPRESENTATIVE, THE GINZBURG TRIAL JUDGE AND A PRISON DOCTOR WHO WAS AT TRIAL MET WITH REPORTERS, PROVIDED INFORMATION AND ADDRESSED QUESTIONS;
-- TWICE DAILY BRIEFINGS AT THE MOSCOW CITY COURT ON THE SHCHARANSKIY TRIAL;

-- NOT HINDERING NOTE-TAKING BY SHCHARANSKIY'S BROTHER DURING TRIAL SESSIONS;

-- PERMITTING SHCHARANSKIY AND GINZBURG TO MAKE DEFENSE STATEMENTS WITH LITTLE OR NO HARASSMENT
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BY SPECTATORS;

-- MAINTAINING TO A VERY LARGE EXTENT CORRECT BEHAVIOR BY MILITIA AND PLAINCLOTHES GUARDS OUTSIDE COURTHOUSES;

-- PERMITTING SHCHARANSKIY'S BROTHER AND GINZBURG'S WIFE AND HIS MOTHER TO HOLD PRESS CONFERENCES ON STREET OUTSIDE COURTROOM FOLLOWING SESSIONS;

-- ISSUING A TASS BRIEFING ON SHCHARANSKIY DEFENSE STATEMENT WHICH, WHILE FAR FROM OBJECTIVE AND COMPLETE, WAS FAR MORE OBJECTIVE AND COMPLETE THAN WE WOULD HAVE EXPECTED.

2. SOVIETS UNDOUBTEDLY NEVER INTENDED TO PERMIT CONCESSIONS ON FORM SPILL OVER INTO SUBSTANCE OF CONDUCT OF TRIALS, WHICH EXPLAINS REFUSAL TO PERMIT SHCHARANSKIY AND GINZBURG UNIMPEDED QUESTIONING OF SUCH WITNESSES AS THEY WERE ALLOWED TO CALL, AND FAILURE TO ENTER INTO COURT RECORD MOST DOCUMENTS SHCHARANSKIY REQUESTED. WE BELIEVE AUTHORITIES'

PREOCCUPATION WITH MAINTAINING CONTROL OVER EVENTS
EXPLAINS MOST OTHER ANOMALIES IN OBSERVANCE OF
FORM OF OPEN PROCEEDINGS -- E.G., BARRICADES AT
BOTH ENDS OF STREET ON WHICH SHCHARANSKIY TRIAL HELD,
FAILURE TO PERMIT SYMPATHIZERS OR WESTERN PRESS
TO ATTEND EITHER TRIAL.

3. GREATEST ANOMALY, HOWEVER, WAS FAILURE TO PERMIT
SHCHARANSKIY'S MOTHER TO ATTEND TRIAL OF HER SON.
IMAGE OF THIS SMALL, GREY-HAIRED GRANDMOTHERLY
FIGURE STANDING AT BARRICADES LOOKING TOWARD BUILDING

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IN WHICH HER SON WAS ON TRIAL FOR TREASON WILL
REMAIN WITH WESTERN OBSERVERS A LONG TIME. IT MADE
A MOCKERY OF SOVIET PROTESTATIONS ABOUT OPENNESS
OF PROCEEDINGS WHICH WESTERN CORRESPONDENTS WERE
NOT SLOW TO MARK. WE HAVE ASKED OURSELVES WHY,
SINCE IT WOULD HAVE BEEN SO EASY FOR AUTHORITIES

TO PERMIT HER TO ENTER, EITHER INSTEAD OF OR WITH SON LEONID, THEY PERMITTED THIS PUBLIC RELATIONS DISASTER TO TAKE PLACE. WE CAN THINK OF ONLY TWO POSSIBILITIES: EITHER AUTHORITIES MADE COLD-BLOODED DECISION TO PUNISH SHCHARANSKIY'S MOTHER
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IN THIS MANNER FOR HER LENGTHY REFUSAL TO COOPERATE IN MATTER OF ATTORNEY FOR HER SON; OR, IN LIGHT OF HER RECENT TELEGRAM ASSERTING THAT SHE (WITH FRENCH ATTORNEY RAPAPORT) WOULD REPRESENT SON, AUTHORITIES DECIDED ON LEGALISTIC GROUNDS THAT IF MOTHER WAS ADMITTED IN ANY STATUS OTHER THAN AS OFFICIAL WITNESS (A STATUS THEY OFFERED) SHE COULD CLAIM RIGHT TO SPEAK ON SON'S BEHALF.

4. WE HAVE NO EVIDENCE WHICH WOULD PERMIT A CHOICE BETWEEN THESE TWO ALTERNATIVES, BUT BELIEVE IN EITHER CASE AUTHORITIES MADE TACTICAL ERROR, SINCE ANATOLIY SHOWED HIMSELF FAR MORE CAPABLE OF HANDLING HIS OWN DEFENSE, AND LEONID OF REPORTING THEREON, THAN THEIR MOTHER WOULD PROBABLY HAVE BEEN IN EITHER CAPACITY. FROM POINT OF VIEW OF REFUSENIKS AND HUMAN RIGHTS ACTIVISTS, AS WELL PERHAPS ULTIMATELY OF SHCHARANSKIY FAMILY ITSELF, AUTHORITIES ENSURED BEST POSSIBLE DISTRIBUTION OF LABOR IN THESE DIFFICULT CIRCUMSTANCES, BY PERMITTING ANATOLIY TO DEFEND HIMSELF, ALLOWING LEONID TO ATTEND AND LEAVING THEIR MOTHER OUTSIDE.

5. REFTTEL REPORTS OUR INTERPRETATION OF SOVIET INTENTIONS DOMESTICALLY IN CONDUCT OF THESE TRIALS. WHAT OF RESULTS IN TERMS OF "AVERAGE" SOVIET CITIZEN? REFUSENIKS PROVIDED US TWO TANTALIZING AND CONTRADICTORY VIGNETTES WHICH ILLUSTRATE DIFFICULTY OF GAUGING SOVIET PUBLIC'S REACTION. ON FIRST DAY OF TRIAL, TWO SOVIET WORKMEN, A LITTLE TIPSY ALTHOUGH THE MORNING WAS NOT YET FAR ALONG, ASKED A REFUSENIK AT SCENE WHAT WAS HAPPENING. HE EXPLAINED ABOUT TREASON TRIAL, NOTING THAT
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SHCHARANSKIY WAS ACCUSED OF WORKING FOR CIA, BUT PRESIDENT CARTER HAD DENIED THIS. WORKERS TOOK IT ALL IN AND SEEMED SATISFIED WITH EXPLANATION, THEN ONE REMARKED, "CARTER WOULDN'T LIE."

6. SECOND CONVERSATION, OVERHEARD BY REFUSENIK ON LAST DAY OF TRIAL, INVOLVED TWO TRUCK DRIVERS, ONE OF WHOM ASKED THE OTHER WHAT WAS HAPPENING. FIRST REPLIED THAT SOMEONE WAS BEING TRIED FOR SPYING FOR AMERICANS, WHICH FIRST ACCEPTED WITHOUT QUESTION AS PERFECTLY PLAUSIBLE OCCURRENCE.

7. IN KALUGA, EMBOFF'S CONVERSATIONS WITH LOCAL RESIDENTS ALSO ILLUSTRATED THESE CONTRADICTIONS. ONE REMARKED, AFTER GUESSING THAT EMBOFF WAS IN TOWN FOR GINZBURG TRIAL, THAT "IT'S NONE OF MY BUSINESS." ANOTHER SAID THAT JEWS HAD HAD IT TOUGH UNDER CZARS, BUT NOW LIVED NORMALLY (FROM WHICH EMBOFF INFERRED HIS INTERLOCUTOR COULD NOT SEE WHAT THEY WERE COMPLAINING ABOUT). WHEN EMBOFF POINTED OUT THAT OTHER NATIONALITIES AS WELL AS JEWS WERE AMONG SOVIET DISSIDENTS, THE SOVIET REPLIED THAT HE HAD NOT BEEN BROUGHT UP TO JUDGE A MAN BY HIS SKIN OR NATIONALITY, AS LONG AS HE WAS A "NORMAL GUY."

8. AN ONLOOKER IN KALUGA, SYMPATHETIC TO GINZBURG BUT UNKNOWN TO HIS SUPPORTERS, WAS TOLD BY ANOTHER: "THEY SHOULD ALL BE SHOT. AND YOU FIRST FOR DEFENDING THEM." AFTER SOME ARGUMENT, THE SYMPATHIZER SHOWED HIS DOCUMENTATION AS A VETERAN AND INVALID OF WORLD WAR II, THUS SILENCING ATTACKS ON HIS LOYALTY AND CONVINCING POLICE, WHO UNTIL THAT

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TIME HAD BEEN LOATHE TO INTERVENE, TO TELL HIS
ATTACKER TO MOVE ALONG. EMBOFF LATER SPOKE WITH
THE VETERAN, WHO SAID HE WAS MERELY STANDING UP
FOR FAIR PLAY. HE RECOGNIZED THAT EVERYONE,
INCLUDING POLICE, HAD A JOB TO DO, BUT SAID HE HAD
LIVED THROUGH THE CAMPS, HIS FATHER HAD BEEN PICKED
UP AND HE DID NOT WANT TO SEE A RETURN TO THAT.

9. THE AUTHORITIES' PREOCCUPATION WITH PRE-
SERVING THE FACADE OF LEGALITY, WHILE MAINTAINING
FULL CONTROL OVER THE LEGAL PROCESS, WAS THE
DOMINANT IMPRESSION GIVEN BY THESE TRIALS; UNDER-
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LYING IT, THE DIFFICULTY OF MAINTAINING GRACEFULLY
EVEN THE FACADE. THERE CAN BE LITTLE QUESTION
THAT, BY COMPARISON WITH STALINIST TIMES, THE
OBSERVANCE OF LEGAL NORMS IN SOVIET SOCIETY HAS
GENERALLY INCREASED, ALTHOUGH REFUSENIKS AND
HUMAN RIGHTS ACTIVISTS ARGUE AMONG THEMSELVES
WHETHER THE PAST FIFTEEN YEARS HAVE SEEN AN
EVOLUTION TOWARD GREATER OBSERVANCE OF THE LEGAL
PROCESS OR A RETROGRESSION TOWARD THE ARBITRARINESS
(ALTHOUGH NOT THE TERROR) OF STALINISM. AS THE
HELSINKI MONITORING GROUP TRIALS HAVE SHOWN, THE
PRESENCE OF WESTERN JOURNALISTS, IN CONJUNCTION
WITH STRONG FOREIGN INTEREST, CAN LEAD THE SOVIETS
TO STRENUOUS EFFORTS TO PRESENT A FACADE OF
LEGALITY, BUT BENEATH THAT FACADE THE REALITY
REMAINS THAT AS THE PARTY'S INTEREST IN A GIVEN
CASE INCREASES, THE SIGNIFICANCE OF SOVIET LEGAL
NORMS TENDS TO DECREASE.

10. NEVERTHELESS, HUMAN RIGHTS ACTIVISTS, WHO HOPE
GRADUALLY TO BREATHE LIFE INTO SOVIET LAWS AND,
LIKE SIR THOMAS MORE, PROTECT THEMSELVES BY
SCRUPULOUSLY OBSERVING THEM, SOUGHT OPPORTUNITIES
DURING TRIALS TO CONFRONT AUTHORITIES OVER VIOLA-
TIONS. ON SEVERAL OCCASIONS IN KALUGA, THEY

DEMANDED ARREST OF SPECTATORS WHO USED FOUL LANGUAGE. NO ARRESTS WERE MADE, BUT SUCH SPECTATORS WERE SOMETIMES TOLD TO MOVE ALONG. ON ANOTHER OCCASION, ONE OF GINZBURG'S SUPPORTERS WAS PERMITTED TO ENTER COURTHOUSE FOR CONSULTATION WITH ATTORNEY ON LEGAL BASIS FOR PRESENCE OF "DRUZHNIKI" (VOLUNTEER GUARDS) OUTSIDE COURTHOUSE. HE RETURNED AND ANNOUNCED THAT LEGAL CONSULTANT HAD TOLD HIM CONFIDENTIAL

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THAT UNDER CODE OF CRIMINAL PROCEDURE DRUZHNIKI MAY NOT BE PRESENT WHEN A TRIAL IS OPEN (AS GINZBURG'S OSTENSIBLY WAS). FACED WITH THIS APPARENT VIOLATION OF SOCIALIST LEGALITY, AUTHORITIES DID NOT REMOVE DRUZHNIKI, BUT RATHER "CLARIFIED" LAW. THE SUPPORTER WAS INVITED BACK INSIDE COURTHOUSE A LITTLE LATER AND TOLD THAT DRUZHNIKI WERE ALWAYS ON HAND AT TRIALS.

11. WE END OUR DIRECT REPORTING ON THESE TRIALS BY RECALLING ONE OF THE MOST IRONIC SYMBOLS OF THE EXPERIENCE -- A TRUCK, PROUDLY DISPLAYING ON ITS WINDSHIELD A PORTRAIT OF STALIN, PULLING OUT OF THE FENCED-IN COMPOUND CONTAINING, AMONG NUMEROUS OTHER BUILDINGS, THE COURTHOUSE IN WHICH SHCHARANSKIY WAS BEING TRIED, ITS DRIVER TO ALL APPEARANCES BEWILDERED BY THE SARDONIC LAUGHTER OF REFUSENIK ONLOOKERS AND THE PHOTOGRAPHY OF WESTERN JOURNALISTS. TOON

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